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as the duration and severity of the circumstances that led to the State's failure to achieve the requirement.

(d)(1) The burden of proof rests with the State to fully explain the circumstances and events that constitute reasonable cause for its failure to meet a requirement.

(2) The State must provide us with sufficient relevant information and documentation to substantiate its claim of reasonable cause.

[64 FR 17890, Apr. 12, 1999; 64 FR 40291, July 26, 1999]

§ 262.6 What happens if a State does not demonstrate reasonable cause?

(a) A State may accept the penalty or enter into a corrective compliance plan that will correct or discontinue the violation in order to avoid the penalty if:

(1) A State does not claim reasonable cause; or

(2) We find that the State does not have reasonable cause.

(b) A State that does not claim reasonable cause will have 60 days from receipt of our notice described in § 262.4(a) to submit its corrective compliance plan.

(c) A State that unsuccessfully claimed reasonable cause will have 60 days from the date that it received our second notice, described in § 262.4(f), to submit its corrective compliance plan.

(d) The corrective compliance plan must include:

(1) A complete analysis of why the State did not meet the requirements;

(2) A detailed description of how the State will correct or discontinue, as appropriate, the violation in a timely manner;

(3) The time period in which the violation will be corrected or discontinued;

(4) The milestones, including interim process and outcome goals, that the State will achieve to assure it comes into compliance within the specified time period; and

(5) A certification by the Governor that the State is committed to correcting or discontinuing the violation, in accordance with the plan.

(e) The corrective compliance plan must correct or discontinue the violation within the following time frames:

(1) For a penalty under § 262.1(a)(4) or (a)(9), by the end of the first fiscal year ending at least six months after our receipt of the corrective compliance plan; and

(2) For the remaining penalties, by a date the State proposes that reflects the minimum period necessary to achieve compliance.

(f) During the 60-day period following our receipt of the State's corrective compliance plan, we may request additional information and consult with the State on modifications to the plan.

(g) We will accept or reject the State's corrective compliance plan, in writing, within 60 days of our receipt of the plan, although a corrective compliance plan is deemed to be accepted if we take no action during the 60-day period following our receipt of the plan.

(h) If a State does not submit an acceptable corrective compliance plan on time, we will assess the penalty immediately.

(i) We will not impose a penalty against a State with respect to any violation covered by a corrective compliance plan that we accept if the State completely corrects or discontinues, as appropriate, the violation within the period covered by the plan.

(j) Under limited circumstances, we may reduce the penalty if the State fails to completely correct or discontinue the violation pursuant to its corrective compliance plan and in a timely manner. To receive a reduced penalty, the State must demonstrate that it met one or both of the following conditions:

(1) Although it did not achieve full compliance, the State made significant progress towards correcting or discontinuing the violation; or

(2) The State's failure to comply fully was attributable to either a natural disaster or regional recession.

§ 262.7 How can a State appeal our decision to take a penalty?

(a)(1) We will formally notify the Governor and the State agency of an adverse action (i.e., the reduction in the SFAG) within five days after we determine that a State is subject to a penalty under parts 261 through 265 of this chapter.

(2) Such notice will include the factual and legal basis for taking the penalty in sufficient detail for the State to be able to respond in an appeal.

(b)(1) The State may file an appeal of the action, in whole or in part, with the HHS Departmental Appeals Board (the Board) within 60 days after the date it receives notice of the adverse action. The State must submit its brief and supporting documents when it files its appeal.

(2) The State must send a copy of the appeal, and any supplemental filings, to the Office of the General Counsel, Children, Families and Aging Division, Room 411–D, 200 Independence Avenue, SW., Washington, DC 20201.

(c) We will submit our reply brief and supporting documentation within 45 days of the receipt of the State's submission under paragraph (b) of this section.

(d) The State may submit a reply and any supporting documentation within 21 days of its receipt of our reply under paragraph (c) of this section.

(e) The appeal to the Board must follow the provisions of the rules under this section and those at §§16.2, 16.9, 16.10, and 16.13–16.22 of this title, to the extent that they are consistent with this section.

(f) The Board will consider an appeal filed by a State on the basis of the documentation and briefs submitted, along with any additional information the Board may require to support a final decision. Such information may include a hearing if the Board determines that it is necessary. In deciding whether to uphold an adverse action or any portion of such action, the Board will conduct a thorough review of the issues.

(g)(1) A State may obtain judicial review of a final decision by the Board by filing an action within 90 days after the date of such decision. It should file this action with the district court of the United States in the judicial district where the State agency is located or in the United States District Court for the District of Columbia.

(2) The district court will review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by 5 U.S.C. 706(2). The court will base its review on the documents and supporting data submitted to the Board.

PART 263—EXPENDITURES OF STATE AND FEDERAL TANF FUNDS

Sec.

AUTHORITY: 42 U.S.C. 604, 607, 609, and 862a.

SOURCE: 64 FR 17893, Apr. 12, 1999, unless otherwise noted.